

**To:** James Freeman[jf@liebowitzlawfirm.com]; Doug Fleurant[doug.fleurant@adlife.com]; Joel Albrizio[joel@adlife.com]; Richard Liebowitz[richardpliebowitz@gmail.com]  
**From:** Rebecca Jones  
**Sent:** Tue 2/25/2020 9:56:01 PM  
**Subject:** Musser's / Karns Discovery - PFP.com TOS  
[Terms of Use.docx](#)

James,  
It was a pleasure to speak with you today.

Per our conversation, I have attached the PreparedFoodPhotos.com Terms of Use.

Please advise is you need any further information from me.

Thank you,  
Rebecca

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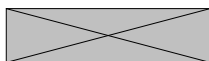
**Rebecca M. Jones**

Intellectual Property Manager

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[rebecca.jones@adlife.com](mailto:rebecca.jones@adlife.com)



[38 Church Street](#)

[Pawtucket, RI 02860](#)

[www.adlife.com](http://www.adlife.com)

# Terms of Use

## END-USER SUBSCRIPTION AGREEMENT

This End-User Subscription Agreement (the "Agreement") is by and between Adlife Marketing & Communications Company, Inc., with business offices located at 38 Church Street, Pawtucket, Rhode Island 02860 ("Adlife"), and you (the "Subscriber"). This Agreement shall be effective as of the date of electronic acceptance by clicking a box indicating acceptance ("Effective Date"). Each of Adlife and Subscriber is a "Party" and together they are the "Parties" to this Agreement.

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the services provided under this Agreement.

WHEREAS, Adlife has developed and maintains an Internet based subscription program allowing subscribers full access to stock photography on the website for the specific purposes of advertising subject to the conditions in this Agreement (the "Services"), provided said Subscriber is in good standing;

NOW, THEREFORE, the Parties hereto, for good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby agree as follows:

### 1. License Grant.

a) **License to Use Service.** Adlife hereby grants to Subscriber a nonexclusive, nontransferable, license during the Term (the "License") to access and use the Services in accordance with this Agreement. All rights not expressly granted to Subscriber under the License are reserved by Adlife. The License granted to Subscriber pursuant to this Agreement will permit use of the Services by the number of Subscriber employees or affiliates ("End-users") specified in the payment summary screen, not to exceed three (3) End-users. Subscribers with greater than three (3) End-users should contact Adlife to purchase a separate Enterprise license.

SUBSCRIBER SHALL BE RESPONSIBLE FOR THE FAILURE OF ANY SUBSCRIBER EMPLOYEE OR AFFILIATE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. UPON TERMINATION OF THIS AGREEMENT, SUBSCRIBER AND ITS END-USERS SHALL IMMEDIATELY CEASE USE OF ANY AND ALL ADLIFE IMAGES.

b) **Designated End-users.** Each End-user will be designated as an End-user within the subscription Services structure. The License to use the Services by each End-user may not be shared or used by

more than three (3)) End-users but may be re-issued from time to time to new End-users upon prior written notification to and acceptance by Adlife. Any unauthorized access to Services, or other abuse or impermissible activity on the Site or in connection with the Services may result in immediate suspension or termination of End-user accounts pursuant to Section 6 of this Agreement, or any remedy permissible by law. Subscriber will promptly notify Adlife of any unauthorized use of the Services in breach of this Agreement, any unauthorized use of accounts, or any other known or suspected breach of security.

c) **Limitations on Use.** The Services are for use only by Subscriber and its assigned End-users. Except as permitted by this Agreement, the Services may not be transferred, distributed, resold, sublicensed, or used to create any derivative works. Subscriber may use the Site and Services only for its internal business purposes and shall not use the Services in association with sending spam or otherwise duplicative or unsolicited messages; use the Services in association with infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or material in violation of third party privacy rights; or attempt to gain unauthorized access to the Site, Services, or its related systems or networks.

## 2. Service Details.

The subscription plan enables the Subscriber to download vector files or JPG images (each a "Work" or "Works") of any available size. The Subscriber has the right to move a file (or files containing it) physically, but copies can be made only for back-up or archival purposes. Files downloaded from the Site may be used by the Subscriber for advertising or similar purposes as permitted by the License Agreement.

If a Work is in violation of a third-party right, Adlife may instruct Subscriber to cease all use, distribution and possession of such Work, and Subscriber must promptly comply with such instructions. Adlife reserves all rights not expressly granted in these terms.

### Permitted Usage:

- Prints, posters and other reproductions for personal use, advertising and promotional applications, including printed files, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards (provided they are not for resale, license or other distribution);

- Print media applications, such as books and book covers, magazines, newspapers, editorials, and newsletters;

- On-line or electronic publications, including web pages, provided, that Subscriber takes all reasonable actions to prevent website visitors from downloading or revising Work that is published on a website; or

- Any other uses approved in writing by Adlife.

Subscribers with questions as to the permitted usage of a specific file should immediately contact Adlife.

Subscriber shall not:

- Use files on products for sale, such as t-shirts, cups, posters, etc., or in places designed for the sale or promotion of such products;
- Use files or their elements as a part of a trademark or trade sign (in full or in part), a company's name, a logo, or a product's trade name;
- Post the Work online in a downloadable format;
- Use files in such a way that would allow a third party to download, transmit, distribute, or perform some other similar means of file exchange, including but not limited to the use of portable storage devices; or
- Use the Services to directly compete with Adlife, its parents or subsidiaries, or to solicit customers or accounts of Adlife.

Subscriber may use the license granted under this Agreement for the benefit of up to three (3) client banners, provided that Subscriber's client must also comply with these terms and comply with all license and use restrictions. Subscriber is solely responsible and liable for any and all use of the Work by its client. If Subscriber intends to use the same Work for the benefit of clients with more than three (3) locations or if Subscriber intends to use the same Work with more than three (3) unique clients, then Subscriber must purchase a separate Enterprise license.

Clients of Subscribers may only use licensed Works as long as the Subscriber maintains an active subscription to the Service. Upon termination, Subscriber and Subscriber's clients must discontinue use of the Works; however, clients of Subscribers may continue to distribute **pre-printed** stock items containing the Work or Works for a period of six (6) months following the termination of the Subscriber's subscription.

Each client of Subscriber must be designated, in writing, to Adlife as a client of the Subscriber. Any unauthorized access to Services, or other abuse or impermissible activity on the Site or in connection with the Services may result in immediate suspension or termination of Subscriber accounts pursuant to Section 6 of this Agreement. Subscriber will promptly notify Adlife of any unauthorized use of the Services in breach of this Agreement, any unauthorized use of accounts, or any other known or suspected breach of security.

**3. Adlife Proprietary Information.** The Site, Services, and its Contents ("Adlife IP") are owned or licensed by Adlife and protected by U.S. and international copyright, trademark, service mark, patent and/or other proprietary rights and laws. Except as expressly provided in this Agreement, nothing contained herein shall be construed as conferring to Subscriber any license or right under copyright or other intellectual property law. No part of the Adlife IP may be altered, copied, photocopied, reproduced, translated or reduced to any electronic medium or machine-readable form, in whole or in part, except as specifically provided in this Agreement. Subscriber shall not take any action that shall interfere with or diminish Adlife's right in any of the Adlife IP.

#### **4. Term, Suspension, and Termination.**

a) **Term.** Unless terminated earlier pursuant to this Section 5 of this Agreement, the initial term ("Initial Term") of this Agreement shall be for a period of twelve (12) months from the Effective Date and shall thereafter automatically continue under this Agreement annually, for successive twelve-month (12) periods ("Subsequent Term") unless either Party provides a ninety-day (90) written notice of termination prior to the end of each twelve-month period. The Initial Term and Subsequent Term shall together be known as the "Term".

b) **Suspension with Right to Cure.** In addition to any other rights and remedies outlined in this Agreement, Adlife reserves the right to suspend the License and Subscriber's access to the Services upon ten (10) days' written notice to Subscriber ("Cure Period") if Subscriber's account becomes delinquent by non-payment for more than fifteen (15) days and such delinquency is not cured within the Cure Period or any other default by Subscriber hereof. Delinquent invoices are subject to interest of one percent (1.0%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Subscriber will continue to be charged for the remainder of the term for any delinquent accounts or for breach of this Agreement, to the extent applicable.

#### **5. Fees and Payment.**

a) **Subscription Fees.** The Introductory Subscription Fees are limited to the first one-hundred subscribers and are described in detail in the payment summary section of PreparedFoodPhotos.com, as the same may be amended from time to time, after the first twelve months following the Effective Date.

b) **Additional End-users.** Subscriber may add End-user licenses at any time during the Initial or Subsequent Terms, not to exceed three (3) end-users per license. Subscriber will be charged in full, according to the pricing set forth in the payment summary screen, for any portion of a calendar month during which End-user licenses have been added. Although Subscriber may decrease End-user licenses at any time, there will be no refunds issued to Subscriber, regardless of nonpayment, nonuse, or other conduct or inaction, and all Subscription Fees will continue to be due through the end of the Initial or Subsequent Terms.

c) **Enterprise Licenses.** Enterprise licenses are available for Subscribers who need greater than three (3) End-user licenses or who need to use any Work for the benefit of clients with more than three (3) locations or with more than three (3) unique clients. Please contact Adlife to obtain a separate Enterprise license.

d) **Taxes and Duties.** Adlife's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Subscriber will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state), local, or other taxes based solely on Adlife's income.

e) **Exclusive, Unlicensed, and Prohibited Use.** Exclusive use of Adlife photography is available at a rate starting at \$8,000 per image, per medium/channel of use. Any unlicensed or prohibited use of any Adlife photography will carry with it a minimum penalty of at least \$8,000 per image, per medium/channel of use.

## **6. Amendments.**

The Parties agree that, in order to continually improve its Services, Adlife may, from time to time, amend its Site and Services in its discretion and will make commercially reasonable efforts to notify Subscribers of said amendments. Subscriber is encouraged to continually check the Site for notices of changes, updates, and improvements.

## **7. Disclaimer of Warranties.**

Adlife does not represent or warrant that this Site or Services will be error-free, or free of viruses or other harmful components. The Site and Services are provided on an "as is" and "as available" basis. Adlife expressly disclaims all warranties, including the warranties of merchantability, and fitness for a particular purpose and non-infringement. Adlife disclaims all responsibility for any loss, injury, claim, liability, or damage of any kind resulting from, arising out of or any way related to (a) any errors in or omissions from this Site and Services; (b) the unavailability of this Site, Services, or any portion thereof; (c) Subscriber's use of this Site or Services; (d) Subscriber's use of any equipment or software in connection with the Site or Services; or (e) any third party web sites or content therein directly or indirectly accessed through links contained on the Site or through the Services.

## 8. Limitation of Liability; Indemnification.

a) THE LIABILITY OF ADLIFE TO SUBSCRIBER FOR ANY AND ALL CAUSE(S) OF ACTION, REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, TORT, NEGLIGENCE OR ANY OTHER), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT WILL IN NO EVENT EXCEED THE AVERAGE MONTHLY SUBSCRIPTION FEES IN THE THEN-CURRENT TERM CONVERTED TO AN ANNUAL BASIS (I.E. AVERAGE MONTHLY SUBSCRIPTION FEES X 12).

b) ADLIFE SHALL NOT BE LIABLE TO SUBSCRIBER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES, OR DAMAGES FROM LOST PROFITS, LOST USE, OR ANY OTHER DAMAGES OF ANY KIND WHATSOEVER IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THIS SITE OR SERVICES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

c) Subscriber agrees to indemnify, defend and hold harmless Adlife, its officers, directors, employees, agents, licensors, suppliers and any third party information providers to the Site or Services from and against all claims, losses, expenses, damages and costs, including reasonable attorneys' fees (collectively, "Losses"), resulting from or in connection with: (i) any breach of any obligation of Subscriber; (ii) violation of any applicable laws by Subscriber, its officers, directors, employees, agents, contractors, or affiliates, End-users, or clients ("Subscriber Responsible Parties"); or (iii) any misuse, loss, damage, corruption, or destruction of the Services by Subscriber Responsible Parties or any breach of security relating to the same.

## 9. Additional Miscellaneous Provisions.

a) **Governing Law; Jurisdiction; Venue; Attorney's Fees.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Rhode Island, except for that body of law addressing conflicts of law. The Parties submit to the jurisdiction of said courts and waive any defense of forum non conveniens. The Parties waive all rights to jury trials. Attorney's fees for the prevailing party shall be paid by the non-prevailing party.

b) **Assignments.** This Agreement shall be binding upon and shall be for the benefit of Adlife and Subscriber and both Parties' respective legal representatives, successors, and permitted assigns; provided, that Subscriber shall not be entitled to assign, sublicense, or delegate this Agreement, in whole or in part, without Adlife's prior written consent. Any attempted assignment, delegation, or assumption of this Agreement not in accordance with this Section will be of no force or effect.

c) **Personal Information.** Adlife agrees to protect Subscriber's Personal Information, as that term is defined in Adlife's Privacy Policy, in accordance with the terms of the Adlife Privacy Policy, which can be found here. <https://preparedfoodphotos.com/privacy.policy.php>

d) **Entire Agreement; Waiver; Relationship of the Parties.** This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Parties. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency, or employment relationship between the Parties, and neither Party shall have any right to bind the other or incur any obligation on the other's behalf without the other's prior written consent. Except as expressly provided for herein, this Agreement is not for the benefit of any third party, but nothing in this Agreement shall prevent or interfere with any consumer bringing an action against Subscriber for violation of law.

e) **Severability of Terms.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the Parties nevertheless agree that the court should endeavor to give effect to the Parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.

f) **Amendment.** Notwithstanding Section 6, this Agreement may be modified only in writing, signed by a duly authorized representative of each Party.

g) **Notices and Contact Information.** Any demand, notice, or other communication required or permitted hereunder shall be effective if in writing and either delivered to the addressee or the email set forth in the "Contact Us" section of the Site (for Adlife); or, if to Subscriber, at email set forth in the Subscriber registration page. Either Party may change its notice email address by providing the other Party with notice of the change.

#### 10. **Acknowledgement.**

You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between you and Adlife, which supersedes any proposal or prior agreement, oral or written, and other communication between you and Adlife relating to the subject matter of this Agreement.

**From:** Google Calendar  
**Importance:** Normal  
**Subject:** Karns 2nd Discovery Request Call Dial Up 712-770-4138 Access Code 893590#  
**Start Date/Time:** Mon 4/13/2020 7:45:00 PM  
**End Date/Time:** Mon 4/13/2020 8:45:00 PM  
[invite.ics](#)

You have been invited to the following event.

**Karns 2nd Discovery Request Call Dial Up 712-770-4138 Access Code 893590#**

**When** Mon Apr 13, 2020 3:45pm – 4:45pm Eastern Time - New York

**Calendar** doug.fleurant@adlife.com

- Who**
- [rebecca.jones@adlife.com](#) - organizer
  - doug.fleurant@adlife.com
  - Joel Albrizio
  - richardpliebowitz@gmail.com
  - jf@liebowitzlawfirm.com

[more details »](#)

Going (doug.fleurant@adlife.com)? [Yes](#) - [Maybe](#) - [No](#) [more options »](#)

Invitation from [Google Calendar](#)

You are receiving this email at the account doug.fleurant@adlife.com because you are subscribed for invitations on calendar doug.fleurant@adlife.com.

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

Forwarding this invitation could allow any recipient to send a response to the organizer and be added to the guest list, or invite others regardless of their own invitation status, or to modify your RSVP. [Learn More.](#)